IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12221 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANSUKHBHAI PATHABHAI VAGRI

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

None present for respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 13/02/2001

ORAL JUDGEMENT

#. Heard learned counsel for the petitioner.

#. The petitioner was detained as dangerous person under the order of the Commissioner of Police, Rajkot City and he is presently at Ahmedabad Central Prison at Ahmedabad.

#. Challenging this order manifold contentions are raised by the learned counsel for the petitioner but as this petition deserves to be allowed only on one ground it is not necessary to refer all those contentions, discuss and decide.

#. Reply to the Special Civil Application has not filed by the respondents and the factual averments made in the Special Civil Application are to be taken to be uncontroverted and same are taken to be admitted by the respondents. In para No.12 of the petition the petitioner averred as under :-

> "The petitioner says and submits that detaining authority has failed to supply the statements of the witnesses which are recorded u/S.161 of Cr.P.C. though all the cases are pending, and therefore, he could not make effective representation to the authority. So his right under Article 22(5) of the Constitution of India is violated. Hence, his continued detention becomes illegal".

#. The representation has been filed by the petitioner and copy of the same is at page No. 20 and there also this grievance has been made that the petitioner has not been supplied all the police papers, meaning thereby the statements of witnesses recorded under Section 161 of the Cr.P.C. in the criminal complaints which are made basis for detention of the petitioner were not supplied to him and as a result of which he has been deprived of his valuable right of making effective representation against the detention order as guaranteed under Article 22(5) of the Constitution of India.

#. I have given my thoughtful consideration to the submission made by the learned counsel for the petitioner.

#. In the representation filed by the petitioner against the detention order, I find that the demand of copies of these documents has been made by the petitioner. It is a clear case where despite of making demand of copies of documents in the representation which are certainly vital and relevant to the matter, same were not given to him and the petitioner is deprived of his valuable right to make effective representation as guaranteed under Article 22(5) of the Constitution of India.

In the result, this petition succeeds and the same is allowed. The order of detention of the petitioner dated 4.8.2000 is quashed and set aside. The petitioner Mansukhbhai Pathanbhai Vagri, the detenu, at present in Ahmedabad Central Prison, Ahmedabad be set at liberty forthwith, if he is not required in any other case. Rule is made absolute. The respondent State of Gujarat is directed to pay Rs.1,000= as the costs of this petition to the petitioner.

#. The learned counsel for the respondent strongly opposed awarding of the cost of this litigation to the petitioner by the court. Firstly it is the discretion of the court to award the costs. So, there is a little scope for raising such objection by the learned counsel for the respondent. Otherwise also I consider it to be a fit case to award the costs. The learned counsel for the petitioner made a statement on being put by the court that he has charged Rs.1,000/= as a fees from the petitioner to provide him his professional services in this case and this amount has been paid by the petitioner to him. It is the question of the personal liberty and the petitioner is free to engage any advocate of his own choice. Nobody can compel the petitioner nor any law which required that he has to engage an advocate which charge lesser fees. The advocate is a professional and if any body approach to him to provide his professional services he can charge his own fees. This is not only money which has been spent by the petitioner but in addition to this he would have spent money for typing charges, court fees and other misc. expenses for filing of the petition but the counsel for the petitioner has not produced any bill of expenses and as such that amount cannot be awarded to the petitioner.

#. The State of Gujarat an impersonal machinery is not at fault in the matter. It's only fault is that it has no control over its officers or it has not taken its officers to the task for their negligence, recklessness, carelessness and unmindful of the duties which they owe to the people. Because of this negligence, recklessness, carelessness and unmindful of the duty of the concerned officer the reply to the Special Civil Application has not been filed. Whatever the amount comes from the exchequer it is a peoples' money. This money has to be paid to the petitioner by the State of Gujarat for not of its own fault but for the negligence, carelessness, reckless and unmindful of duty of its officer concerned in this matter. The State of Gujarat through the Chief Secretary is directed to hold an inquiry in the matter and whosoever is found responsible for not filing the

reply in the matter on the inquiry this amount of the cost is to be recovered from him. This inquiry is to be completed within a period of six months from the date of the receipt of the writ of this order. Compliance of the order be reported to this court by the Chief Secretary. Unless it is scrupulously done and the officers who are found negligent, careless and unmindful in discharging of their duties as a result of which the State of Gujarat has to suffer monetary loss and that amount is not recovered from those officers its House may not be corrected.

(S.K.Keshote, J.)
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